



उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक G.A. No. 682/93 सन् 200

54

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	<u>SB : HON'BLE SHRI-DHIRENDRA MISHRA, J.</u> <u>APPELLANTS</u> 1. Sohanlal Satnami, son of Vishambhar Satnami, aged 27 years, occupation Agriculture, resident of village Bhinoda, P.S. Sarsinva, Tehsil Baloda Bajar, District Raipur. 2. Shekh Ismail, son of Shekh Rahman, aged 27 years, occupation - Dukandari, resident of village Sarsinva, P.S. Sarsinva, Tehsil Baloda Bajar, District Raipur Vs. <u>RESPONDENT</u> State of Chhattisgarh through P.S. Sarsinva, Tehsil Baloda Bajar, District Raipur <u>2-8-2007</u> Shri Arun Kochar, Advocate for the appellants. Shri Pradeep Singh, Panel Lawyer for the State. This criminal appeal is directed against the judgment of conviction and order of sentence dated 13th July, 1993 passed in S.T. No. 207/1987 whereby the learned Additional Sessions Judge, Baloda Bajar has convicted appellant No. 1 Sohanlal for offence under Section 307 read with Section 34 of I.P.C. and appellant No. 2 Shekh Ismail under Section 120-B of I.P.C. and sentenced them to undergo R.I. for three years. Apart from these two appellants, accused Arif has also been convicted under Section 307 of I.P.C. and sentenced to undergo R.I. for three years. The other three accused persons namely Laxmikant Pandey, Panna @ Pannalal and Seetaram	

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आदेश पत्रक

मामला क्रमांक GA NO. 682/93 सन् 200

विरुद्ध

5

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	who also faced trial for offence under Section 120B of I.P.C. have been acquitted. 2. Case of the prosecution, in brief, is that the complainant Nishamani Munna, who is a police constable lodged a report ⁱⁿ on the Police Station Sarsinva on 5-3-1987 at about 8.30 a.m. mentioning therein that today in the morning he had gone to Bus Stand to see off his father and brother. While he was standing near Thakur Cycle Store, appellant Sohanlal Satnami requested him to sit and when he was reading newspaper, one Ram Kumar Namdeo came there and said that paper belongs to him. At that time, appellant Sohanlal got up and started laughing. In the meanwhile, someone threw chili powder on his eyes and at the same time, someone assaulted him by lathi on his back of the head. Someone from crowd shouted that it is Arif Khan, go and catch him. After hearing that whatever Ismail had said, is accomplished, he fell unconscious. He has been assaulted by Arif Khan and the incident was witnessed by Ramkumar Namdeo, Jitendra Thakur and Lallu Thakur etc. After registering the offence, the injured was sent for medical examination where Dr. D. Chourasiya (P.W. 1) examined his injuries and gave his report of Ex. P-1. He also advised X-ray of skull. The patient was discharged vide document of Ex. P-3, however X-ray report has not been produced during trial. After completing the investigation, charge sheet was filed against the appellants and 4 other accused persons in the Court of Judicial Magistrate First Class, Baloda Bajar who in turn	

[पाठ्य दस्तखत]

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

क्र. A. NO. 682/93
मामला क्रमांक सन् 200

विरुद्ध

(56)

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	committed the case to the Sessions Judge, Raipur from where learned Additional Sessions Judge received the same on transfer for trial. 3. Charge under Section 307 of I.P.C. was framed against the accused Arif whereas charge under Section 307 read with Section 34 of I.P.C. was framed against appellant Sohanlal and charge under Section 120 B of I.P.C. was framed against rest of the accused persons including appellant Shekh Ismail, who abjured their guilt. 4. The prosecution examined 9 witnesses. Statement of accused persons were recorded under Section 313 of Cr.P.C. Shekh Ismail denied the allegations present against him in the prosecution case and stated that he has been falsely implicated since he is a correspondent of Daily Amrat Sandesh and complainant Nishamani Munna used to make illegal recovery from the truckers and this was published in the daily newspaper Amrat Sandesh at his instance and, therefore, for this reason the complainant had threatened him that some day, he will implicate him in a case and teach him lesson. Similarly appellant Sohanlal has also denied the circumstances appearing against him in the prosecution evidence and has taken a defence that he is a worker of Congress Party whereas complainant belongs to B.J.P. therefore, he has falsely implicated him. 5. Learned counsel for the appellants submits that there is not an iota of evidence against the appellant and they have been convicted on the basis of the statement of complainant Nishamani Munna.	

[राज्य दाख्य]

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आदेश पत्रक

C.A.No- 682/93

मामला क्रमांक

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
	There is no evidence available on record that the appellant Sohanlal with a common intention with accused Arif assaulted the complainant. Similarly, there is no evidence of criminal conspiracy as none of the witnesses have stated that the appellant Shekh Ismail was seen in the company of accused Arif Khan or that the incident was as a result of criminal conspiracy hatched between Arif, Shekh Ismail and other accused persons. 6. On the other hand, learned counsel for the State supports the impugned judgment. 7. I have heard learned counsel for the parties. 8. P.W. 1 Dr. B. Chourasiya has proved the injury report of Ex. P-1 and has stated that in the said incident, the complainant has sustained two lacerated wounds over frontal bone of skull and one lacerated wound on occipital bone of skull and he was also complaining irritation in his both the eyes. Since the injuries No. 2, 3 and 4 were on vital part of the body, the same could be grievous in case the injured was not admitted in the hospital. However there is no evidence of this witness that the injury present over the skull was sufficient to cause death in the ordinary course of nature in absence of any treatment. 9. The conviction of the appellants is based on solitary testimony of P.W. 5 complainant Nishamani Munna. This witness reiterating his version in the F.I.R. has stated that while he was standing before a tailoring shop, accused Sohanlal came near him and asked him to	

[पाठ दाख्य]

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Cr. A. No. 682/93

मामला क्रमांक

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(38)

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
		occupy the bench whereupon he sat there and started reading English newspaper. At that time, one Namdeo came there and asked for the newspaper. At that time, Sohanlal got up and started laughing and in the meanwhile, somebody threw chili powder over his eyes and also assaulted on his head by stick whereupon he shouted. Number of persons were standing there and persons who were standing said that the assailant of the constable is Arif of Basna and thereafter he became unconscious. In para 4 of his deposition, he has stated that the person who had thrown chili powder on his eyes had assaulted him on his head and since the persons in the crowd were shouting that Arif has fled after assaulting, he is saying that Arif Khan has assaulted him and while he was running away, he was shouting that the task which was handed over to him by Ismail Khan and Laxmikant, that has been accomplished. There is no other evidence available on record except the above statement of the complainant against the present appellants. The other witnesses who have been examined by the prosecution namely P.W. 3 Ramkumar, P.W. 6 Jitendra Kumar and P.W. 7 Rudrapratap have turned hostile and in their cross-examination, the prosecution has not been able to elicit anything against the present appellants. P.W. 4 Mithilesh who is also witness of the fact that at the time of incident, the appellant Sohanlal and complainant Nishamani Munna were sitting together, has not stated anything which incriminate these appellants.

[पीछे देखिये]

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

Cr. A. No. 682/13

मामला क्रमांक

सन् 200

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आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
P/-	10. Learned trial Court on the basis of the above statement of the complainant has held that appellant Sohanlal had a common intention with the accused Arif of assaulting the complainant as he was sitting there and was laughing when the incident took place and has convicted him under Section 307 read with Section 34 of I.P.C. and only on the evidence that while Arif was running away from the place of incident, he was shouting that he has accomplished the task given to him by Shekh Ismail, has convicted appellant Shekh Ismail under Section 120-B of I.P.C. In the considered opinion of this Court, the inference drawn by the trial Court against the appellants is totally erroneous and same cannot be sustained. 11. In the result, the appeal is allowed. Conviction of the appellant Sohanlal under Section 307 read with Section 34 of I.P.C. and conviction of appellant Shekh Ismail under Section 120-B of I.P.C. and the sentences imposed upon them under those sections are set aside. The appellants are on bail. Their bail bonds are discharged.	Sd/- Dhirendra Mishra Judge

[पीछे देखिये]